

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant	: James Paul Haughwout	Art Unit	: 3627
Serial No.	: 09/819,899	Examiner	: Maria Thein
Filed	: March 29, 2001	Conf. No.	: 5374
Title	: SMART TRANSFER		

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REPLY BRIEF

Pursuant to 37 C.F.R. § 41.41, Appellant responds to the points raised in the Examiner's Answer dated December 13, 2007 as follows.

Independent claims 90, 107, and 120, along with their dependent claims 94, 96, 97, 111, 112, 124, 125, and 151-153, are not properly rejected under 35 U.S.C. § 103(a) as being unpatentable over Dhir in view of Kanevsky.

Independent claims 90, 107, and 120, along with their dependent claims 94, 96, 97, 111, 112, 124, 125, and 151-153, stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Dhir (U.S. Patent No. 6,553,113) in view of Kanevsky (U.S. Patent No. 6,665,644). Notwithstanding comments made in the Examiner's Answer, Appellant maintains the positions previously articulated in the Appeal Brief that neither Dhir, Kanevsky, nor any proper combination of the two, describes or suggests the subject matter of the independent claims 90, 107, and 120, as described more fully below.

Independent claim 90 recites, inter alia, storing in a first electronic database, prior to the receipt of the incoming service call from the caller, a sales pitch preference of the caller, as an additional attribute, comprising a preference of the caller not to receive any sales pitches. Appellant submits that neither Dhir, Kanevsky, nor a proper combination of two, describes or suggests at least this feature.

Specifically, the Examiner's Answer relies on Kanevsky for teaching "a preference of the caller not to receive any sales pitch." Examiner's Answer at page 15, lines 21-22. In addressing this feature, the Examiner's Answer primarily restates teachings from Kanevsky and fails to

specifically address Appellant's arguments presented in the Appeal Brief. See Examiner's Answer at page 15, line 22 through page 16, line 19. In the concluding remarks regarding this feature, the Examiner's Answer states:

Such an attribute data which is stored in the data warehouse which correlates with at least one user attribute and is stored together with at least one identifying indicia; the identifying indicia associated with the attribute data is useful in the data mining process; a collection of stored data which can be mined to provide information which may be desired, for example, information to be used in modifying the underlying business logic of the voice system; and users who have problems with the automated system and should be transferred to an operator, and users who are angry at the service should be transferred to a supervisory person are considered a preference of the caller not to receive any sales pitch. Examiner's Answer at page 16, line 20 through page 17, line 6.

As best understood, the Examiner appears to equate the decision of the Kanevsky system to transfer users determined to have problems with the system and users determined to be angry at the service to a supervisory user as a preference of the caller not to receive any sales pitches. Appellant respectfully disagrees and submits that the decision to transfer a user to a supervisory user made by the Kanevsky system based on an inference of the mood of the user cannot reasonably be construed as "a preference of the caller not to receive any sales pitches."

In particular, the Kanevsky system infers a mood of a caller based on acoustic attributes of the caller's speech in interacting with an automated voice response system. See Kanevsky at col. 4, line 66 through col. 5, line 4. Using the inferred mood (which may or may not be the actual mood of the caller), the Kanevsky system determines whether to present an offer to the caller or to transfer the caller to a human operator. See Kanevsky at col. 7, lines 41-54 and col. 11, lines 49-55. Such a determination, which is made exclusively by the Kanevsky system, does not signal a preference of a caller not to receive any sales pitches, as suggested by the Examiner, but rather signals a preference of a merchant to present or not to present an offer to a caller having a particular inferred mood. The preference of the merchant that dictates presentation of an offer to the caller is, at most, based on a mere prediction, by the merchant, of the preference of the caller, and is not based on the preference of the caller itself.

To illustrate, an angry caller may still be interested in a sales pitch, and thus may have a preference to receive sales pitches, yet the Kanevsky system would not permit that caller to receive a sales pitch because the Kanevsky system operates in accordance with a preference of merchants to not present sales pitches to callers detected as being angry. Similarly, a happy caller may not be interested in receiving any sales pitches, and thus may have a preference not to

receive any sales pitches, yet the Kanevsky system would burden that caller with an undesired sales pitch simply because the Kanevsky system operates in accordance with a preference of merchants to present sales pitches to callers detected as being happy. As such, the Kanevsky system does not determine whether to present a sales pitch to a caller in accordance with the sales pitch preferences of the caller, as asserted by the Examiner, but rather determines whether to present the sales pitch to the caller in accordance with the sales pitch preferences of merchants that, for example, prefer to present an offer to a caller that is detected as being happy and prefer not to present an offer to a caller that is detected as being angry. Notably, and as illustrated in the above example, the inferred mood of the caller is not a preference of the caller with respect to sales pitches. Rather, the inferred mood is, just that, an inferred mood that may or may not correspond to the caller's sales pitch preference and that is used by the Kanevsky system to effectuate merchant sales pitch preferences.

Moreover, independent claim 90 recites "storing in a first electronic database . . . a sales pitch preference of the caller, as an additional attribute, comprising a preference of the caller not to receive any sales pitches." The system of Kanevsky, however, stores an inferred mood of the caller, without storing any indication of a sales pitch preference of the caller. Instead, the stored mood is manipulated by the Kanevsky system to determine a preference of the merchant and, therefore, is not storage of the preference itself. As such, the Kanevsky system does not store a sales pitch preference of the caller, as an additional attribute, comprising a preference of the caller not to receive any sales pitches, opting instead to store mood data which (at most) leads to a mere prediction, by the merchant, of a preference of the caller.

Accordingly, Kanevsky fails to describe or suggest "storing in a first electronic database, prior to the receipt of the incoming service call from the caller, a sales pitch preference of the caller, as an additional attribute, comprising a preference of the caller not to receive any sales pitches" (emphasis added), as recited in independent claim 90. For at least the forgoing reasons and the reasons presented in the Appeal Brief, Appellant respectfully requests reversal of the rejection of independent claim 90, along with its dependent claims.

Independent claim 107 recites a system for leveraging an incoming service call for assistance as a conduit to assist a human operator to solicit the caller to purchase a merchandise or service. The system includes, inter alia, "a first electronic database configured to store as an

attribute related to the caller and prior to the receipt of the incoming service call from the caller, a sales pitch preference of the caller comprising a preference of the caller not to receive any sales pitches.” As such, Appellant respectfully requests reversal of the rejection of independent claim 107, along with its dependent claims, for at least the reasons presented above with respect to independent claim 90.

Independent claim 120 recites a computer program stored on a computer readable medium for leveraging an incoming service call for assistance as a conduit to assist a human operator to solicit the caller to purchase a merchandise or service. The computer program includes, inter alia, “a first database code segment configured to store as an attribute related to the caller and prior to the receipt of the incoming service call from the caller, a sales pitch preference of the caller comprising a preference of the caller not to receive any sales pitches.” As such, Appellant respectfully requests reversal of the rejection of independent claim 120, along with its dependent claims, for at least the reasons presented above with respect to independent claim 90.

Independent claim 136, along with its dependent claims 137-150, are not properly rejected under 35 U.S.C. § 103(a) as being unpatentable over Dhir in view of Kanevsky.

Independent claim 136, along with its dependent claims 137-150, stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Dhir in view of Kanevsky. Notwithstanding comments made in the Examiner's Answer, Appellant maintains the positions previously articulated in the Appeal Brief that neither Dhir, Kanevsky nor any proper combination of the two, describes or suggests the subject matter of the independent claim 136, as described more fully below.

Independent claim 136 recites, inter alia, storing a sales pitch preference in a first electronic database to be used as an additional attribute of the caller, the sales pitch preference comprising a preference of the caller not to receive a sales pitch related to a first service or product and not to receive any sales pitches related to a provider of the first service or product, and searching, based upon at least the additional attribute of the caller, a second electronic database of potential sales pitches to identify a first sales pitch that is not related to the first

service or product and is not related to the provider of the first service or product. Appellant submits that neither Dhir, Kanevsky, nor a proper combination of two, describes or suggests at least these features.

The Examiner's Answer relies on Kanevsky for teaching "the sales pitch preference comprising a preference of the caller not to receive a sales pitch related to a first service or product and not to receive any sales pitches related to a provider of the first service or product." Examiner's Answer at page 18, lines 4-6. In addressing this feature, the Examiner's Answer primarily restates teachings from Kanevsky and fails to specifically address Appellant's arguments presented in the Appeal Brief. See Examiner's Answer at page 18, line 7 through page 19, line 11. In the concluding remarks regarding independent claim 136, the Examiner's Answer states:

Such an attribute data which is stored in the data warehouse which correlates with at least one user attribute and is stored together with at least one identifying indicia; the attribute can include the gender of the user, accent of the user, native language of the user, socioeconomic classification of the user, dialect of the user, educational level of the user, and the emotional state of the user; the identifying indicia associated with the attribute data is useful in the data mining process; a collection of stored data which can be mined to provide information which may be desired, for example, information to be used in modifying the underlying business logic of the voice system; and users who are angry at the service should be transferred to a supervisory person are considered "a preference of the caller not to receive a sales pitch related to a first service or product and not to receive any sales pitches related to a provider of the first service or product". Examiner's Answer at page 19, lines 12-22.

Appellant submits that none of the listed attributes related to characteristics of a user (i.e., "gender of the user, accent of the user, native language of the user, socioeconomic classification of the user, dialect of the user, educational level of the user, and the emotional state of the user") in any way describe or suggest "a preference of the caller not to receive a sales pitch related to a first service or product and not to receive any sales pitches related to a provider of the first service or product," as recited in independent claim 136.

Moreover, Appellant submits that Kanevsky's description that "users who are angry at the service should be transferred to a supervisory person" does not describe or suggest "a preference of the caller not to receive a sales pitch related to a first service or product and not to receive any sales pitches related to a provider of the first service or product," as recited in independent claim 136. Rather, the Kanevsky system, at most, makes a general determination not to present a caller with an offer without regard for the service or product and the provider of the service or product related to the offer. Stated differently, the claimed preference of the caller

not to receive a sales pitch related to a first service or product and not to receive any sales pitches related to a provider of the first service or product requires at least some information related to the service or product and the provider to which the preference pertains. In Kanevsky, even the preference of the merchant not to present an angry caller with an offer (which as discussed above is not a preference of the caller), does not include any information or in any way account for the service/product or the provider to which the offer pertains. Therefore, “a preference of the caller not to receive a sales pitch related to a first service or product and not to receive any sales pitches related to a provider of the first service or product” is absent from Kanevsky’s description that “users who are angry at the service should be transferred to a supervisory person.”

Furthermore, independent claim 136 also recites searching, based upon at least the additional attribute of the caller (i.e., the preference of the caller not to receive a sales pitch related to the first service or product and not to receive any sales pitches related to the provider of the first service or product), a second electronic database of potential sales pitches to identify a first sales pitch that is not related to the first service or product and is not related to the provider of the first service or product. Appellant submits that the Kanevsky system, which either presents an offer to a caller or transfers a caller to a human operator without presenting an offer, does not identify a first sales pitch that is not related to the first service or product and is not related to the provider of the first service or product. Notably, the final Office Action admits that Dhir does not disclose this feature. See final Office Action of December 15, 2006 at page 7, lines 1-7.

Accordingly, Dhir and Kanevsky, either alone or in the proposed combination, fail to describe or otherwise suggest “storing a sales pitch preference in a first electronic database to be used as an additional attribute of the caller, the sales pitch preference comprising a preference of the caller not to receive a sales pitch related to a first service or product and not to receive any sales pitches related to a provider of the first service or product, and searching, based upon at least the additional attribute of the caller, a second electronic database of potential sales pitches to identify a first sales pitch that is not related to the first service or product and is not related to the provider of the first service or product,” as recited in independent claim 136.

For at least the forgoing reasons and the reasons presented in the Appeal Brief, Appellant respectfully requests reversal of the rejection of independent claim 136, along with its dependent claims.

Independent claims 133-135 are not properly rejected under 35 U.S.C. § 103(a) as being unpatentable over Dhir in view of Kanevsky and Szlam.

Independent claims 133-135 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Dhir in view of Kanevsky and Szlam (U.S. Patent No. 5,511,112). Notwithstanding comments made in the Examiner's Answer, Appellant maintains the positions previously articulated in the Appeal Brief that neither Dhir, Kanevsky, Szlam, nor any proper combination of the references, describes or suggests the subject matter of the independent claims 133-135, as described more fully below.

Independent claim 133 recites, inter alia, omitting to search a second electronic database for a potential sales pitch based on the identified information indicative of past misbehavior, wherein the identified information indicative of past misbehavior includes information that the caller has acted illegally or that the caller has violated a terms of service agreement associated with the caller's account, and routing the service call to a human operator based on the identified information indicative of past misbehavior. Appellant submits that neither Dhir, Kanevsky, Szlam, nor a proper combination of references, describes or suggests at least these features.

The Examiner's Answer relies on Szlam for teaching "the past misbehavior which includes information that the caller has violated a terms of service agreement associated wit[h] the caller's account." Examiner's Answer at page 21, lines 18-20. Specifically, the Examiner's answer states that "late payment and delinquent account are considered past misbehavior of violating a term of service agreement associated with the caller's account." Examiner's Answer at page 22, lines 1-2. The only portion of Szlam cited throughout prosecution is col. 8, lines 20-26. This portion of Szlam recites:

Once connected, the agent can then discuss the matter or reason for which the customer was called, for example, discussing a late payment account, collecting on a delinquent account, verifying an order, updating customer account information, etc., while being directly connected, online, to mainframe 16. Szlam at col. 8, lines 20-26.

This portion of Szlam merely indicates that an agent can call a customer and discuss with the customer, for example, a late payment account or a delinquent account. Nothing in this portion of Szlam, however, describes or suggests (1) omitting to search a second electronic database for a potential sales pitch based on the late payment or delinquent account, and (2) routing the service call to a human operator based on the late payment or delinquent account.

In particular, Szlam does not relate to presenting sales pitches and, therefore, does not describe or suggest omitting to search a second electronic database for a potential sales pitch, much less doing so based on information that the caller has violated a terms of service agreement associated with the caller's account. The mere fact that Szlam contemplates an agent discussing a late payment or delinquent account with a customer does not describe or suggest using this information as a basis for omitting to search an electronic database for a potential sales pitch. Because Szlam does not describe or suggest using late payment or delinquent account information as a basis for omitting to search an electronic database for a potential sales pitch (or in any way related to presenting sales pitches), one of ordinary skill in the art would have no reason to use this type of information in the proposed combination of Dhir and Kanevsky.

In addition, Szlam does not route a service call to a human operator based on identified information indicative of past misbehavior (i.e., the information that the caller has acted illegally or that the caller has violated a terms of service agreement associated with the caller's account). Rather, Szlam contemplates the agent (e.g., the human operator) placing the call to the customer and, therefore, does not (and has no need to) route the call to a human operator, much less to route the call based on the late payment or delinquent account.

Accordingly, Szlam does not remedy the noted deficiencies of Dhir and Kanevsky because Szlam provides no description or suggestion of using late payment or delinquent account information as a basis for omitting to search a database of potential sales pitches or routing a service call. Appellant submits that any reason to use the claimed information (i.e., the information that the caller has acted illegally or that the caller has violated a terms of service agreement associated with the caller's account) as a basis for omitting to search a database of potential sales pitches or routing a service call is based on impermissible hindsight gleaned from Appellant's application.

For at least the forgoing reasons and the reasons presented in the Appeal Brief, Appellant respectfully requests reversal of the rejection of independent claim 133.

Independent claim 134 recites a system for leveraging an incoming service call for assistance as a conduit to assist a human operator to solicit the caller to purchase a merchandise or service. The system includes, inter alia, “a search component configured to identify in the first electronic database the information indicative of past misbehavior based on the caller identity, wherein the information indicative of past misbehavior includes information that the caller has acted illegally or that the caller has violated a terms of service agreement associated with the caller’s account, and a call router configured to bypass a sales pitch selection process and to route the service call to a human operator based on the identified information indicative of past misbehavior.” As such, Appellant respectfully requests reversal of the rejection of claim 134, for at least the reasons presented above with respect to claim 133.

Independent claim 135 recites a computer program stored on a computer readable medium for leveraging an incoming service call for assistance as a conduit to assist a human operator to solicit the caller to purchase a merchandise or service. The computer program includes, inter alia, “a call routing code segment that causes the computer to bypass the second database code segment and to route the service call to a human operator based on the identified information indicative of past misbehavior, wherein the identified information indicative of past misbehavior includes information that the caller has acted illegally or that the caller has violated a terms of service agreement associated with the caller’s account.” As such, Appellant respectfully requests reversal of the rejection of claim 135, for at least the reasons presented above with respect to claim 133.

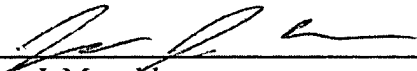
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For these reasons, and the reasons stated in the Appeal Brief, Appellant submits that the final rejection should be reversed. Please apply any charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

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